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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

ATTY DOCKET NO.: AUS000072US1

In re Application of:

RANDOLPH M. FORLENZA, ET AL.

Examiner: Hung Q. Pham

Serial No.: 09/549,966

Art Unit: 2162

Filed: April 14, 2000

Customer No.: 45502

For: EXTENSION OF BROWSER WEB PAGE
CONTENT LABELS AND PASSWORD
CHECKING TO COMMUNICATIONS
PROTOCOLS§
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Conf. No.: 9041

APPEAL BRIEF UNDER 37 C.F.R. §41.37Mail Stop Appeal Briefs - Patents
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Sir:

This Appeal Brief is submitted in support of the Appeal of Examiner Hung Q. Pham's final rejection of the above-identified patent application. This Appeal was requested in the Notice of Appeal under 37 C.F.R. §41.31 submitted and received by the U.S.P.T.O. on July 28, 2005. Please charge any necessary fees and credit any overpayments associated with the submission of this brief or otherwise necessary to further prosecution of this application to IBM Corporation Deposit Account No. 09-0447.

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REAL PARTY IN INTEREST

The real party in interest in the present Application is International Business Machines Corporation, the Assignee of the present application as evidenced by the Assignment set forth at reel 000730, frame 0407.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative, or assignee, which directly affect or would be directly affected by or have a bearing on the Board's decision in the present appeal.

STATUS OF CLAIMS

Claims 6, 13, and 20 were finally rejected by the Examiner as noted in the Final Office Action dated May 26, 2005. The rejection of claims 6, 13, and 20 is being appealed.

STATUS OF AMENDMENTS

A proposed amendment was provided by Appellants via facsimile on June 24, 2005 for purposes of conducting an Examiner interview teleconference; however, no Amendment under 37 C.F.R. §1.116 has been submitted subsequent to the Final Office Action dated May 26, 2005. Claims 6, 13, and 20 were each previously amended and claims 1-5, 7-12, 14-19, and 21 were previously canceled without prejudice or disclaimer of the subject matter recited therein.

SUMMARY OF THE CLAIMED SUBJECT MATTER

In the claimed embodiment of Appellants' claim 6, a method of establishing access control within a data processing system is recited which comprises

- obtaining content label categories at the data processing system that present a unique label identifying the type of content for each respective category of a plurality of categories; (Fig. 2, step 204; Page 11, Lines 9-17 of Appellants' specification)

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- obtaining associated user restrictions at the data processing system defining at least one user's access privileges to each respective category of the plurality of categories as a function of the content label categories; (Fig. 2, step 204; Page 11, Lines 9-17 of Appellants' specification)
- distributing the obtained content label categories and obtained associated user restrictions to each of a plurality of communications programs within the data processing system, wherein at least two of the communications programs employ different communications protocols; (Fig. 2, step 206; Page 11, Line 19 – Page 12, Line 15 of Appellants' specification)
- setting access controls for at least two of the communications programs within the data processing system that employ different communications protocols (e.g., browser 114 and news reader 116) as a function of the content label categories and associated user restrictions; (see Fig. 2; Page 11, Lines 1-4; Page 11, Line 29 – Page 12, Line 15; Page 14, Lines 9 – 14 of Appellants' specification) and
- during installation of a communications program subsequent to setting access controls for each communications program within the data processing system as a function of the content label categories and associated user restrictions, checking for existing access control settings for other communications programs and setting access controls for the communications program being installed utilizing the existing access control settings. (Page 5, Lines 22-25 and Page 12, Lines 21-23 of Appellants' specification)

In the claimed embodiment of Appellants' claim 13, a system (e.g., client 112 of Fig. 1) for establishing access control within a data processing system is recited which comprises

- means for obtaining content label categories (e.g., label bureau 126a, file manager 120, and/or access control module 122 of Fig. 1) at the data processing system that present a unique label identifying the type of content for each respective category of a plurality of categories; (Fig. 2, step 204; Page 11, Lines 9-17 of Appellants' specification)

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- means for obtaining associated user restrictions (e.g., file manager 120 and/or access control module 122 of Fig. 1) at the data processing system defining at least one user's access privileges to each respective category of the plurality of categories as a function of the content label categories; (Fig. 2, step 204; Page 11, Lines 9-17 of Appellants' specification)
- means for distributing the obtained content label categories and obtained associated user restrictions (e.g., access control module 122 of Fig. 1) to each of a plurality of communications programs (e.g., browser 114, news reader 116, mail program 118 of Fig. 1) within the data processing system, wherein at least two of the communications programs employ different communications protocols;
- means for setting access controls (e.g., access control module 122 of Fig. 1) for at least two of the communications programs within the data processing system that employ different communications protocols as a function of the content label categories and associated user restrictions; and
- means operable during installation of a communications program subsequent to setting access controls for each communications program within the data processing system as a function of the content label categories and associated user restrictions for checking for existing access control settings for other communications programs and for setting access controls for the communications program being installed utilizing the existing access control settings. (communications programs such as browser 114, news reader 116, mail program 118 of Fig. 1; Page 5, Lines 22-25; Page 12, Lines 21-23 of Appellants' specification)

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In the claimed embodiment of Appellants' claim 20, a computer program product within a computer usable medium (Page 14, Line 31 – Page 15, Line 10 of Appellants' specification) for establishing access control within a data processing system is recited which comprises

- instructions for obtaining content label categories at the data processing system that present a unique label identifying the type of content for each respective category of a plurality of categories; (Fig. 2, step 204; Page 11, Lines 9-17 of Appellants' specification)
- instructions for obtaining associated user restrictions at the data processing system defining at least one user's access privileges to each respective category of the plurality of categories as a function of the content label categories; (Fig. 2, step 204; Page 11, Lines 9-17 of Appellants' specification)
- instructions for distributing the obtained content label categories and obtained associated user restrictions to each of a plurality of communications programs within the data processing system, wherein at least two of the communications programs employ different communications protocols; (Fig. 2, step 206; Page 11, Line 19 – Page 12, Line 15 of Appellants' specification)
- instructions for setting access controls for at least two of the communications programs within the data processing system that employ different communications protocols as a function of the content label categories and associated user restrictions; (see Fig. 2; Page 11, Lines 1-4; Page 11, Line 29 – Page 12, Line 15; Page 14, Lines 9 – 14 of Appellants' specification) and
- instructions executed during installation of a communications program subsequent to setting access controls for each communications program within the data processing system as a function of the content label categories and associated user restrictions for checking for existing access control settings for other communications programs and for setting access controls for the communications program being installed utilizing the

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existing access control settings. (Page 5, Lines 22-25 and Page 12, Lines 21-23 of Appellants' specification)

GROUND'S OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner's rejections of claims 6, 13, and 20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,911,043 (issued to Duffy et al., hereinafter "*Duffy*") is to be reviewed on Appeal.

ARGUMENT

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference(s) or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Moreover, when applying 35 U.S.C. 103, both the claimed invention and the cited references must be considered as a whole and the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 229 USPQ 182, (Fed. Cir. 1986).

Appellants respectfully submit that the Examiner's cited reference fails to teach, show, or suggest all elements of Appellants' claims and that one of ordinary skill in the art at the time of Appellants' invention would not have been motivated to modify the teachings of *Duffy* as suggested by the Examiner as will be described more fully herein.

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Duffy fails to teach, show, or suggest "distributing" as claimed

Exemplary claim 6 of the above-identified patent application recites a method of establishing access control within a data processing system, comprising *inter alia*,

*obtaining associated user restrictions at the data processing system defining at least one user's access privileges to each respective category of the plurality of categories as a function of the content label categories;
distributing the obtained content label categories and obtained associated user restrictions to each of a plurality of communications programs within the data processing system, wherein at least two of the communications programs employ different communications protocols; and*

In the Final Office Action dated May 26, 2005 the Examiner states that *Duffy* teaches a system and method of providing an automated rating to a wide variety of access technologies used in a global computer network like the Internet. More specifically, the Examiner equates *Duffy*'s "user rating" with Appellants' "associated user restrictions" and category rating components of *Duffy*'s "document ratings" with Appellants' "content label categories" in support of the proposition that *Duffy* teaches "obtaining content label categories" and "obtaining associated user restrictions" as claimed. The Examiner further equates *Duffy*'s "retrieve module" with Appellants' "plurality of communications programs" and states that,

...the category ratings as content label categories and user rating as associated user restrictions [are] distributed to each of a plurality of communications programs within the data processing system, wherein at least two of the communication[s] programs employ different communication protocols (Col. 2, Lines 13-20 and Col. 8, Lines 6-24.)

Appellants respectfully disagree.

Duffy teaches a system and method for computer-based rating of information retrieved from a computer network. As depicted in Fig. 1, *Duffy* teaches a system including a server 12, and a client 14 coupled to a computer network 16. According to *Duffy*'s teaching, server 12 "retrieves information from network 16 in the form of documents and generates document ratings for each document" (*Duffy*, column 2, lines 60-63) which all or a portion of are then communicated to client 14 using a communications module 28 and network 16 (*Duffy*, column 4, lines 6-8). Document ratings (communicated from server 12 or generated locally) may then be

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used in conjunction with user ratings by client 14 to screen information retrieved from network 16.

Duffy's teaching shows neither the generation of user ratings within server 12 nor the communication of such user ratings from client 14 to server 12. Rather, *Duffy* teaches the communication from client to server of only messages generated by an update module 38 and including updated, new or modified document ratings from a rate file 24 of client 14 for deliver to server 12 (*Duffy*, column 4, lines 49-52). Appellants submit that as only document ratings are communicated between server 12 and client 14 and no user ratings are stored within or utilized by server 12, *Duffy* may not be construed as teaching, showing, or suggesting the "data processing system" of Appellants' claim which obtains user restrictions and includes communications programs to which obtained associated user restrictions are distributed.

The use of user ratings is taught by *Duffy* however within client 14. As depicted in Fig. 1 of *Duffy*, client 14 includes a communications module 36, providing communication between components of client 14 and network 16, an update module 38 as previously-described, a database 40 which stores a rate file 24 that may be identical to, a portion of, or otherwise related to rate file 24 maintained in server 12, an input module 42 allowing access to and modification of the client's rate file 24, a retrieve module 18 (e.g., a browser and optionally software that supports file transfer protocol (FTP), Gopher, UseNet, TelNet, Archie, bulletin boards, news groups, electronic mail, or other protocols or techniques that allow information to be retrieved from network 16) a rate module 20, and a rating rules database 22 similar to those illustrated within server 12, as well as a screen module 44 and an output module 46 (see *Duffy*, column 3, line 36 – column 4, line 34). For purposes of this appeal, Appellants will focus on the functionality of *Duffy's* retrieve module and screen module.

As the Examiner has equated *Duffy's* retrieve module with Appellants' "plurality of communications programs" and *Duffy's* user ratings with Appellants' "user restrictions" a *prima facie* case of obviousness requires a showing that *Duffy* teaches, shows, or suggest, "distributing" user ratings to the described retrieve module. Appellants respectfully submit however that no user ratings (or document ratings for that matter) are distributed or otherwise provided to the retrieve module according to *Duffy's* teaching. Rather, *Duffy* teaches that user

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ratings are "determined" and compared to retrieved document ratings by the screen module (see *Duffy*, Fig. 4, step 308 and accompanying description at *Duffy*, column 8, lines 24-51).

With regard to the retrieve module, *Duffy* teaches the retrieval of documents from network 16 (*Duffy*, column 3, lines 36-37), the passage of retrieved documents to rate module 20 (*Duffy*, column 3, lines 49-50), the provision of a document address to screen module 44 (*Duffy*, column 4, line 66 -67), and the extraction of document addresses (*Duffy*, column 5, lines 64-67). *Duffy* further teaches that client access to a document may be denied based upon a comparison of document and user ratings by screen module 44 (*Duffy*, column 8, lines 42-51). *Duffy* fails to teach however that user ratings (or any other ratings) are distributed to the retrieve module. Accordingly, utilizing the Examiner's own analysis and proposed system elements, *Duffy* may not be construed as teaching, showing or suggesting "distributing" obtained user restrictions to each of a plurality of communications programs as claimed.

Duffy fails to teach, show, or suggest "checking" and "setting" as claimed

Exemplary claim 6 of the above-identified patent application further recites

during installation of a communications program subsequent to setting access controls for each communications program within the data processing system as a function of the content label categories and associated user restrictions, checking for existing access control settings for other communications programs and setting access controls for the communications program being installed utilizing the existing access control settings.

In the Final Office Action dated May 26, 2005 the Examiner states that *Duffy* teaches "checking" and "setting" of access control settings as claimed. More specifically, the Examiner states at pages 6 and 7 that,

As shown at FIG. 4, retrieve module 18 communicates the document address, either an IP or non-IP address, to screen module 44. If address is non-IP, e.g., URL address or email address, and if the address has been rated, document rating in rate file 24 as existing access control setting is used to check document rating with user rating. Granting or denying access as setting access control is determined at box 312 and 316 based on the process of checking at box 310 via rate file 24 as existing access control setting (Col. 8, Line 24-Col. 9, Line 6).

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Thus equating the access grant or deny result of a comparison of document and user ratings of *Duffy* with "access controls settings" as claimed by Appellants.

The Examiner further states that while *Duffy* does not explicitly teach the application of "checking" and "setting" during the installation of a communication program that in a "real life scenario" an additional retrieve module (the example of a "Gopher" application is given) may be installed and that "after the installation" such an additional retrieve module could then be used to retrieve a document causing "checking" and "setting" to be performed as rate file data is used to determine if a document identified using an alternate one of an IP address and non-IP address has been previously rated. Appellants respectfully disagree.

As an initial matter, Appellants note that by the Examiner's own reasoning, *Duffy* fails to teach, show, or suggest checking "existing access control settings" (equated by the Examiner with a grant or deny result of a comparison of document and user ratings) as claimed but rather teaches, at most, a determination of whether previously-created document ratings (equated by the Examiner with Appellants' content label categories) exist. Appellants respectfully submit that if the document ratings of *Duffy* may be construed as teaching "access control settings" as claimed, there would be no need to compare document and user ratings, contrary to *Duffy*'s teaching.


Appellants further submit that, as is clearly indicated by the Examiner's argument, the Examiner has failed to address all elements of Appellants' claim. Appellants' claim 6 clearly recites that "checking" and "setting" associated with a communication program are performed "during installation" of that program. *Duffy*'s teaching, by contrast, contains no showing or suggestion that the determination of whether a requested document has been previously rated under another address is or could be made for a retrieve module during that module's installation. In fact, the Examiner explicitly states that by his reasoning, such "checking" and "setting" would occur "after the installation of such a module (see the Final Office Action dated May 26, 2005, page 7, last paragraph).

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CONCLUSION

Appellants have pointed out with specificity the manifest errors in the Examiner's rejections, and the claim language that renders the invention patentable over the reference. Appellants, therefore, respectfully request that this case be remanded to the Examiner with instructions to issue a Notice of Allowance for all pending claims.

Respectfully submitted,



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CLAIMS APPENDIX

1-5. (canceled)

6. A method of establishing access control within a data processing system, comprising:
- obtaining content label categories at the data processing system that present a unique label identifying the type of content for each respective category of a plurality of categories;
 - obtaining associated user restrictions at the data processing system defining at least one user's access privileges to each respective category of the plurality of categories as a function of the content label categories;
 - distributing the obtained content label categories and obtained associated user restrictions to each of a plurality of communications programs within the data processing system, wherein at least two of the communications programs employ different communications protocols; and
 - setting access controls for at least two of the communications programs within the data processing system that employ different communications protocols as a function of the content label categories and associated user restrictions; and
 - during installation of a communications program subsequent to setting access controls for each communications program within the data processing system as a function of the content label categories and associated user restrictions, checking for existing access control settings for other communications programs and setting access controls for the communications program being installed utilizing the existing access control settings.

7-12. (canceled)

13. A system for establishing access control within a data processing system, comprising:
- means for obtaining content label categories at the data processing system that present a unique label identifying the type of content for each respective category of a plurality of categories;

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- means for obtaining associated user restrictions at the data processing system defining at least one user's access privileges to each respective category of the plurality of categories as a function of the content label categories;
- means for distributing the obtained content label categories and obtained associated user restrictions to each of a plurality of communications programs within the data processing system, wherein at least two of the communications programs employ different communications protocols; and
- means for setting access controls for at least two of the communications programs within the data processing system that employ different communications protocols as a function of the content label categories and associated user restrictions; and
- means operable during installation of a communications program subsequent to setting access controls for each communications program within the data processing system as a function of the content label categories and associated user restrictions for checking for existing access control settings for other communications programs and for setting access controls for the communications program being installed utilizing the existing access control settings.

14-19. (canceled)

20. A computer program product within a computer usable medium for establishing access control within a data processing system, comprising:

- instructions for obtaining content label categories at the data processing system that present a unique label identifying the type of content for each respective category of a plurality of categories;
- instructions for obtaining associated user restrictions at the data processing system defining at least one user's access privileges to each respective category of the plurality of categories as a function of the content label categories;
- instructions for distributing the obtained content label categories and obtained associated user restrictions to each of a plurality of communications programs within the data processing system, wherein at least two of the communications programs employ different communications protocols; and

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instructions for setting access controls for at least two of the communications programs within the data processing system that employ different communications protocols as a function of the content label categories and associated user restrictions; and

instructions executed during installation of a communications program subsequent to setting access controls for each communications program within the data processing system as a function of the content label categories and associated user restrictions for checking for existing access control settings for other communications programs and for setting access controls for the communications program being installed utilizing the existing access control settings.

21. (canceled)

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EVIDENCE APPENDIX

Other than the Office Action(s) and reply(ies) already of record, no additional evidence has been entered by Appellants or the Examiner in the above-identified application which is relevant to this appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings as described by 37 C.F.R. §41.37(c)(1)(x) known to Appellants, Appellants' legal representative, or assignee.